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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

B. EDWARD MCCUTCHAN, JR., Plaintiff and Appellant, v. HAROLD THOMAS MCCUTCHAN, Individually and as Trustee, et al., Defendants and Respondents.	A152101 (Sonoma County Super. Ct. No. SCV-254228)

Plaintiff B. Edward McCutchan, Jr. (Edward[1]) appeals from an order denying his motion to vacate an interlocutory judgment on his quiet title cause of action against his brother, Harold Thomas McCutchan (Harold), individually and as trustee of their parents' trust (the Ben Edward and Barbara Louise McCutchan 2000 Revocable Trust (the Trust)), and his sister, Nancy Jane McCutchan (Nancy). (We refer to Harold in both capacities and Nancy collectively as "defendants"). The underlying judgment, which is the primary subject of Edward's appeal, was issued after the trial court bifurcated Edward's quiet title cause of action from his partition cause of action and conducted a trial to determine the interests of Edward, his siblings and the Trust in the property.

Providing no summary of the facts or the evidence submitted at trial in his opening brief, Edward challenges the judgment on several legal grounds, all of which the trial court heard (some repeatedly) and rejected. Although he testified at trial, implicit in

[1] Because the parties in this case and their parents, whose trust and gifts are discussed, all share the same last name, for clarity and convenience we will refer to the parties by the first names they used at the trial. No disrespect is intended.

Edward's failure to provide any recitation of the facts is the view that the evidence at trial and the trial court's factual findings are largely irrelevant to his legal arguments. As will be seen, that is not the case. But Edward has not clearly challenged any of the trial court's findings, which we presume are supported by the evidence. (*Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1109.) It was Edward's burden to show they are not. (*Ibid*.) Not only has he failed to meet that burden, he has waived any substantial evidence challenge by failing to provide a fair summary of all of the material evidence in his opening brief. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 52–53; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) We therefore accept the trial court's findings as true and consider Edward's arguments in the context of the facts as the trial court found them.

Taking the facts as the trial court found them, we conclude that there was no error. The trial court's findings that the entire McCutchan family, including Edward, understood the gifts of property by the parents to the children to be gifts of the vineyard land and not of the residence property and that the metes and bounds descriptions in the deeds were the product of a mistake and did not reflect the parties' actual intent support its conclusion that the deeds should be reformed to reflect the actual intent. Edward's various arguments that, notwithstanding these facts, the court could not order reformation of the deeds are simply wrong as a matter of law. In particular, the trial court rightly rejected Edward's contention that the metes and bounds descriptions in the deeds were dispositive in ascertaining what property the parties intended to convey and that evidence of a contrary intent could not be considered. Courts construe deeds as they do contracts, and their primary focus is to determine and carry out the parties' intent. Extrinsic evidence is admissible either to prove a meaning to which a deed is reasonably susceptible or to prove a mistake in a deed even if it does not appear to be ambiguous. The trial court here faithfully applied these rules, ascertained that the deeds reflected a mistake of fact on the part of the parties, and ordered reformation of the deeds, if possible, to reflect their true intentions. We affirm its decision.

BACKGROUND

The trial court issued a thorough and carefully crafted 25-page statement of decision, from which we summarize the relevant facts. Ben McCutchan (Ben) and his wife Barbara McCutchan (Barbara) owned two parcels of real property in Sonoma County. The first consisted of about 86 acres, and the McCutchan family's ownership of that parcel dated back to 1899. The second consisted of about 45 acres, which the McCutchan family acquired in 1916. These parcels, which the trial court referred to as "the 'legal description' parcels," "adjoin each other and run 'vertically' North to South, with Alexander Valley Road bisecting them as it runs from East to West through these lands."

In each year from 1991 through 1995, Ben and Barbara gifted equal shares in their property to their three children, Edward, Harold and Nancy. The deeds were prepared by the Passalacqua law firm in Healdsburg. The deeds referred to the property being gifted by both legal descriptions and both Assessor Parcel Numbers (APNs).[2]

However, as is often the case, the assessment parcels referred to by the APNs for the properties owned by Ben and Barbara are configured differently than the legal description parcels.[3] APN 06 contains about 101.6 acres, is commonly known as 2101 Alexander Valley Road and was referred to by the McCutchan family as "the

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[2] APNs are numbers used in conjunction with maps by county assessors' offices to designate portions of land for property tax purposes and do not necessarily correspond to legal descriptions contained in the deeds through which title to property is held. (*Cafferkey v. City & County of San Francisco* (2015) 236 Cal.App.4th 858, 861, fn. 2, 868 (*Cafferkey*).) The APNs in this case were APN 091-020-006, which the court and parties referred to as "APN 06," and APN 091-030-004, which they referred to as "APN 04." We will adopt the same shorthand.

[3] " 'An "assessment parcel" of land is an area of land in one ownership and one general use. A parcel shows land area as it is actually owned and used rather than as it may have been plotted on subdivision or other maps. It is an area of land that in the opinion of the assessor should be included under one description for assessment purposes after consideration of all legal factors. [¶] A parcel may have been conveyed by one deed or by several deeds, and it may contain several lots or fractions of lots.' " (*Cafferkey*, *supra,* 236 Cal.App.4th at pp. 868–869 [quoting Assessors' Handbook].) " 'For simplicity, the parcel number should automatically refer to an assessor's map and to a particular parcel of land on that map.' " (*Cafferkey,* at p. 869.)

'vineyard.' " APN 04 contains about 28.9 acres, is commonly known as 2312 Alexander Valley Road and was referred to by the McCutchans as "the 'residence' property, or the 'hill' land." APN 06 lies entirely north of Alexander Valley Road, and APN 04 lies entirely south of it, and each of these assessment parcels encompasses a portion of each of the two legal description parcels. The gift deeds executed by Ben and Barbara in the years 1991 through 1995 "described gifts of land in both legal parcels and both APNs, so that the children of Ben and Barbara were thereafter co-owners with their parents of both the vineyard and the residence properties."

These gifts did not coincide with the grantors' intent. Ben and Barbara had intended to gift their children portions of the vineyard land only, APN 06. In 1996, Ben learned that the 1991 to 1995 gift deeds granted interests in both the residence property (APN 04) and the vineyard properties. He and Barbara promptly sought the legal services of attorney Bradford DeMeo[4] to correct the mistakes.

DeMeo testified that he was hired to correct the 1991 to 1995 gift deeds so that Ben and Barbara gifted only shares of the vineyard property to their children, which is what they thought the original gift deeds had accomplished. DeMeo prepared correction gift deeds for the five years to carry out Ben and Barbara's intention that the gifts to their children be from the vineyard land only, or APN 06, and that the residence property remain in Ben and Barbara's ownership. The corrected gift deeds were intended to replace the original gift deeds in their entirety and provided they were " 'in substitution, entire replacement and correction of' " the original gift deeds. Edward signed these correction gift deeds. Edward, Harold and Nancy "all received a larger percentage of the vineyard land in exchange for transferring their mistaken interests in the residence property via" the correction gift deeds.

Unfortunately, the correction gift deeds did not fully rectify the problem. In preparing these and all subsequent gift deeds, DeMeo deleted from the exhibits describing the property the reference to APN 04 to make clear that the gifts were from

[4] By the time of trial, Bradford DeMeo was a judge on the Sonoma County Superior Court.

APN 06 only. He also deleted one of the two metes and bounds descriptions that had previously been included, specifically, that for the second parcel (the one acquired by the McCutchan family in 1916). However, the legal metes and bounds description in the correction gift deeds and subsequent gift deeds was the description for parcel one, the 1899 parcel, that is, a parcel running north to south that included portions of both APN 04 and APN 06. This is because, "[a]t the time he prepared the Correction Gift Deeds, DeMeo understood that the legal description for the 1899 parcel . . . actually described APN 06. This was an error and a clear mistake." Indeed, DeMeo did not learn that the 1899 deed legal description did not match APN 06 until the trial in this case. "Thus, in the preparation of all the Correction Gift Deeds (Defendants' Exhibits 24–28) and all subsequent gift deeds made, attorney DeMeo, Ben and Barbara, and all the children were all in error."

That the legal descriptions contained in the original, corrected and subsequent gift deeds were erroneous and that it was always the intent of Ben and Barbara as well as their three adult children to give and receive interests in the vineyard only and not the residence property was established by DeMeo's testimony, the correction deeds themselves (and Edward's signing of them), a recorded document entitled Correction of Legal Descriptions of Deeds of Gift, signed by Edward and his siblings and parents, stating that the earlier gift deeds erroneously described the property being gifted to include APN 04 when they "should have only designated [APN 06] as the parcel given," other documents in DeMeo's files, the testimony of Ben and Barbara's estate planning attorney, Leonard Tillem, documents relating to Ben's death and documents prepared by Edward himself, including a demand letter to his mother and siblings stating his wish that they buy him out of his ownership interest in APN 06 and his verified complaint in which he referred to the properties by their APN numbers and gave the same mistaken legal descriptions for the properties as the family had been using all along. Edward also continued to refer to the properties by APN numbers rather than by legal descriptions in his discovery requests to plaintiffs. Edward, working with DeMeo, prepared gift tax

returns for the vineyard parcel (APN 06) only based on an appraisal of that parcel. No gift tax returns were ever prepared for APN 04.

It was only at trial that Edward changed his contention. Whereas previously he had contended that the APNs controlled the issue of property ownership in the case, at trial he asserted that the legal descriptions, not the APNs, controlled ownership. He further asserted that the correction gift deeds did not affect his interest in the residence parcel, which had mistakenly been gifted to him in the original deeds, but only served to increase his interest in the vineyard parcel.

Edward testified that the McCutchan family never referred to APN 06 as the vineyard or to the hillside (residence) property as APN 04, and that Ben never said he would not transfer any of the homestead. The court found his testimony was not credible and, more specifically, that it "flies in the face of all the evidence, both oral and documentary, submitted in this trial." In particular, the court rejected his contention that the correction gift deeds did not have the effect of transferring back the interests in the residential property (APN 04) to his parents, and only served to increase his interest in the vineyard property (APN 06). In rejecting this argument, the court observed that "[Edward], along with [Harold] and Nancy, signed each Correction Gift Deed that recited, in part 'This Deed is in substitution, entire replacement and correction of that certain Deed executed by the above-named grantors to the above-named grantees dated . . .' and thereafter states 'We, the undersigned grantees, hereby join in the above Correction Deed.' "

In 2013, Edward filed a complaint against his sister Nancy, his brother, Harold, individually and as trustee of the Trust, "and all persons claiming any interest in the designated property." He did not name his mother, Barbara, or the estate of his father, Ben. He asserted causes of action for quiet title, partition by sale of real property, and for a trust accounting. The court denied Edward's petition for an accounting before trial, bifurcated the remaining causes of action, proceeded to a trial on the quiet title cause of action and issued a statement of decision and an interlocutory judgment quieting title.

The judgment quieted title initially for all of the property in Harold, as trustee of the Trust, so as to authorize him to seek certificates of compliance from the county under the Subdivision Map Act to reconfigure the lots in accordance with the parcels referenced in the APNs. The judgment further quieted title in two alternative ways, depending on the outcome of the Subdivision Map Act proceedings. If the county granted Harold's application for the certificates of compliance, title was quieted in accordance with Ben and Barbara's original intent, with the result that the Trust would own all of the residence parcel (APN 04) and 23.5 percent of the vineyard parcel (APN 06) and Edward, Harold and Nancy would each own a 25.5 percent interest in the vineyard property. If Harold was unable to secure the certificates of compliance necessary under the Subdivision Map Act "to allow reformation of the deeds to reflect ownership interests via legal descriptions comporting with the APN and street address designations" as described in the judgment, then the gift deeds would be rescinded and one hundred percent of the all property at issue would be quieted in the Trust.

Edward moved to vacate the judgment and, after the court denied that motion, appealed.

DISCUSSION

I.

The Trial Court Did Not Err In Considering Extrinsic Evidence.

Edward challenges the trial court's interpretation of the gift deeds as conveying portions only of the vineyard property, claiming that because the deeds contained legal descriptions they were not "ambiguous on their face" and the court should not have admitted extrinsic evidence to interpret them. According to Edward, the 1991 to 2002 gift deeds "are unambiguous on their face as a matter of law matching exactly the true and correct metes and bounds legal descriptions that his father, his grandfather and his great-grandfather had received in the very same lands by prior recorded deeds. Edward relies on Revenue and Taxation Code section 11911.1, Code of Civil Procedure section 2077 and *Cafferkey*, *supra*, 236 Cal.App.4th 858 for his assertion that the APN

numbers on the gift deeds could not be considered in interpreting the deeds or assessing whether there was an ambiguity.

We begin with the rules that govern construction of real property deeds. "With deeds, as with all contracts, the primary object of interpretation is to ascertain and carry out the intention of the parties. [Citations.] In achieving this purpose, we must keep in mind the following: A grant is to be construed in the same manner as contracts in general (Civ. Code, § 1066) . . . ." (*County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 573.) " 'All the rules of interpretation must be considered and each given its proper weight, where necessary, in order to arrive at the true effect of the instrument. [Citation.]' [Citations.] 'Extrinsic evidence is "admissible to interpret the instrument, but not to give it a meaning to which it is not susceptible" [citations], and it is the instrument itself that must be given effect.' " (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238 (*City of Manhattan Beach*); see Prob. Code, §§ 21101, 21102.) "In this regard, '[t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.' " (*City of Manhattan Beach*, at p. 246.)

These rules apply to ascertainment of the boundaries of the property conveyed. " 'In the construction of boundaries, the intention of the parties is the controlling consideration. [Citation.] Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract. As stated in *Miller & Lux, Inc. v. Secara*, 193 Cal. 755, "Intention, whether express or shown by surrounding circumstances, is all controlling . . . . " ' [Citation.] [¶] '[E]xtrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. [Citation.] In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and

then read and interpret the words used in light of these circumstances.' " (*People ex rel. Brown v. Tehama County Bd. of Supervisors* (2007) 149 Cal.App.4th 422, 437.)

There are many ways to describe property being conveyed. (See 12 Witkin, Summary of Cal. Law (11th ed. 2017) Real Property, § 283, p. 336.) It is not essential that any particular method be used. (*Id*., § 289, p. 341.) "[I]f the description is insufficient or even wholly omitted by mistake, parol evidence may be admitted and the deed reformed to cure the defect." (*Id*., § 289, pp. 341–342.) "Uncertainty may be resolved by practical construction, i.e., by the conduct of the parties acting under it." (*Id*., § 289, p. 343.)

Edward acknowledges that extrinsic evidence may be admitted "to resolve an ambiguity on the face of the deed" but contends such evidence is inadmissible because the deeds here were not "ambiguous on their face." There is no ambiguity, Edward says, because the deeds' "historic true and accurate metes and bounds legal descriptions and the percentages of land being gifted" are contained in the deeds, and because the APNs they contain cannot create an ambiguity because Revenue and Tax Code section 11911.1 precludes use of such APNs as extrinsic evidence to determine the legal description of the property. Edward is wrong in at least three respects.

First, the admissibility of extrinsic evidence does not turn on whether a document is "ambiguous on its face." On the contrary, as we have already stated, " '[t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.' " (*City of Manhattan Beach*, *supra*, 13 Cal.4th at p. 246.)

Second, here, the extrinsic evidence demonstrated that the correction gift deeds and subsequent gift deeds *were* ambiguous.[5] The exhibits to these deeds purporting to describe the property specifically referred to APN 06 only but contained a metes and

[5] Edward focuses on the original gift deeds, but we focus instead on the correction gift deeds and subsequent gift deeds, since the trial court found that the original deeds were superseded by the correction gift deeds with the consent of all parties.

bounds description that covered portions of both APN 06 *and* APN 04 and did not include APN 06 in its entirety. The extrinsic evidence tended to prove a meaning to which the language of the deeds, which included the APN numbers, was reasonably susceptible. It showed that parties referred to the two parcels by their APN numbers, as well as by other descriptors, such as the "vineyard" or "hill" property and the "residence" or "homestead" property, the street addresses of those two properties and their spatial relationship with (north of or south of) Alexander Valley Road. And it showed that Ben and Barbara intended only to convey interests in the vineyard or hill property. The evidence also showed all of the parties—*including Edward*—believed the metes and bounds description used in the correction and subsequent gift deeds described the parcel known as APN 06 (even though it in fact described the property conveyed in 1899). All of this evidence reflected that the property description consisting of a combination of the metes and bounds description with an APN number that reflected different (albeit partially overlapping) pieces of land was ambiguous and could be read to mean the property described as APN 06 rather than the property reflected by the metes and bounds description.[6]

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[6] Contrary to Edward's argument, Revenue and Tax Code section 11911.1 does not preclude consideration of extrinsic evidence that the McCutchan family used those parcel numbers to describe the property. Section 11911.1 is part of the Documentary Transfer Tax Act, which allows counties by ordinance to impose a documentary transfer tax on sales of realty exceeding $100 and to require that deeds have the tax roll parcel number noted on them. (Rev. & Tax Code, §§ 11901, 11911, 11911.1.) It is in that context that section 11911.1 provides that the tax roll parcel number will be used for administrative and procedural purposes and not as proof of title. Nothing in the section prohibits grantors or grantees from using the parcel number for their own purposes as part of a description of the property subject to transfer, which here the extrinsic evidence showed to be the case. As the trial court aptly put it, "the position taken by Ed regarding the 'inevitability' of legal descriptions vis-à-vis APNs ignores the necessary application of the law regarding mistake, deed interpretation and other doctrines that obviate the legal description analysis he makes."

Nor does *Cafferkey*, which Edward repeatedly cites but fails meaningfully to discuss, aid his argument. The court there simply recognized the differences between assessment parcels and other legal divisions and boundaries of land and held that "[t]he

Third, even if the deeds had been unambiguous, Edward's argument still would fail because the law does not require a deed to be ambiguous for extrinsic evidence to be admissible. In *Estate of Duke* (2015) 61 Cal.4th 871, the California Supreme Court made this eminently clear.[7] In *Estate of Duke*, the Supreme Court reconsidered and rejected "the historical rule that extrinsic evidence is inadmissible to reform an unambiguous will." (*Id*. at p. 875.) The court recognized that this rule applied to wills but *not to deeds and other documents*,[8] and concluded "that the categorical bar on reformation of wills is not justified." (*Estate of Duke*, at p. 875.) It held that, as with other documents, "an unambiguous will may be reformed if clear and convincing evidence establishes that the will contains a mistake in the expression of the testator's intent at the time the will was

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description of property in the assessor's maps controls for tax assessment purposes." (*Cafferkey*, *supra*, 236 Cal.App.4th at pp. 869, 872.) It does not hold parties can never describe property in a deed by reference to APNs.

Finally, Code of Civil Procedure section 2077, which like *Cafferkey*, Edward sprinkles liberally over the pages of his briefs, does not avail his argument. That section provides certain "rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful *and there are no other sufficient circumstances to determine it*." (Italics added.) Here, there was extensive evidence of the parties' intent and meaning in connection with the gift deeds providing ample circumstances for the trial court to determine their meaning.

[7] The trial court discussed *Estate of Duke* and described it as "pivotal" to this case, yet neither of the parties has discussed or even cited the case in their appellate briefs.

[8] Up to that point, California law did not authorize admission of extrinsic evidence to correct a mistake in a will when the will was unambiguous. (*Estate of Duke*, *supra*, 61 Cal.4th at p. 879.) However, it did authorize admission of extrinsic evidence to correct mistakes in documents other than wills, *including deeds and gift deeds*, even when the donor is deceased. (*Id*. at pp. 886–888; see *id*. at p. 887, citing *Reina v. Erassarret* (1951) 103 Cal.App.2d 258, 266 [gift deed]; *Merkle v. Merkle* (1927) 85 Cal.App. 87, 104, [deed]; and *Robertson v. Melville* (1923) 60 Cal.App. 354, 356 [deed].) The Supreme Court noted in *Estate of Duke* that it had imposed a clear and convincing evidence standard in cases involving inheritance rights to address evidentiary concerns particular to those cases. (*Estate of Duke*, at pp. 888–890.)

drafted and also establishes the testator's actual specific intent at the time the will was drafted." (*Ibid*.)

Applying the standard of proof articulated in *Estate of Duke*, the trial court here found by clear and convincing evidence that "there was a mistake in the drafting of each of the gift deeds and Correction Gift Deeds, and that the intention of the grantors, Ben and Barbara, was to gift to [Edward], Nancy and [Harold] only portions of the property lying north of Alexander Valley Road, commonly referred to as 2101 Alexander Valley Road, APN 091-020-006." Edward does not contest these findings, which is unsurprising given the ample support for them in the record.[9]

For all of these reasons, Edward's contention that the trial court erred in considering extrinsic evidence and reforming the correction gift deeds and subsequent gift deeds based on such evidence has no merit.

II.

Edward's Arguments About Revocation of Gifts Lack Merit.

Edward contends that the revocation of the original gift deeds, which the trial court found the parties had replaced by the correction gift deeds, could not have the effect of eliminating his interest in the residence property because section 1148 of the Civil Code provides that gifts, other than those in view of impending death, cannot be revoked by the giver. The argument is premised on Edward's further contention that he did not consent to the correction of the gift deeds to remove any interest in the residence parcel (APN 04). That factual premise, however, ignores the trial court's findings, as to which Edward has waived any substantial evidence challenge.

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[9] Edward argues there was "no evidence" that he or his siblings "deeded any of their gift deeds back to their parents." He provides no cogent argument as to why this matters, and we cannot tell whether he is challenging the form of the correction gift deeds or arguing that the absence of a document "deeding back" the residence parcel in so many words undermines the court's findings of mistake. Edward cites no authority and indeed provides no argument for the proposition that such language is required before the court can reform the gift deeds, and thus he has not met his burden to show any legal error in this regard.

Specifically, the court found Edward consented to the correction of the original deeds to eliminate any interest on his and his siblings' part in the residence parcel. The statement of decision described in detail the evidence of this, including that Edward signed the gift deeds directly under language stating that he "joined in the above Correction Deed." Further, the trial court found that at the time the correction deeds were signed, Edward, his parents and siblings and their attorney (with whom Edward worked) all believed that the legal description for the 1899 parcel contained in those deeds "actually described APN 06"—in other words, that the correction deeds were changing the description of the gifted property to an interest in the vineyard parcel only. The court described a letter Edward signed that recited that the five original gift deeds gave the children "an interest in both 'APN 06 and 04,' " "that the gifts should have been to APN 06 only, i.e., what the grantors characterize as the 'vineyard property,' " and "that the children, including [Edward], currently hold as tenants in common an undivided zero percent interest in APN 04, with Ben and Barbara owning a 100 percent interest in APN 04." There is more, but we need not describe all of the evidence the trial court relied on to find that Edward "joined and consented" to the correction gift deeds and that when he did so he, like the rest of his family, believed the legal description they contained referred to the vineyard land (APN 06), and did not include any of the residence property (APN 04). While Edward took the position at trial "that the legal descriptions, not the APNs, control ownership," this was a change from the position he had taken up through the filing of his verified complaint. The court found Edward's testimony that he believed the correction gift deeds just gave him more of the vineyard land but did not remove the residence land from the gift was not credible. As the trial court summed it up, "[Edward's] conduct at and after execution of the deeds at issue belies his claims at trial."

Edward's argument fails for a second reason. Civil Code section 1148 addresses revocation of a gift by the grantor "where one, possessed of a sound and disposing mind, transfers by gift or voluntarily, and without consideration, personal property [or real] to another." (*Murdock v. Murdock* (1920) 49 Cal.App. 775, 781.) "What is really meant,

though, by section 1148 in its declaration that a gift *inter vivos*, or a gift other than a *donatio causa mortis*, cannot be revoked by the giver is that, when a gift of personal property is once made, the title thereto immediately passes to the donee and that such title cannot be divested, disturbed, or menaced *capriciously or at the mere whim of the donor*." (*Ibid*., italics added.) However, Civil Code section 1148 does *not* address, much less preclude, equitable rescission or reformation of a gift deed where there has been a fraud, misrepresentation or mistake of fact. (See *Murdock*, at p. 782 [section 1148 does not mean a gift may not be set aside for misrepresentation or fraud].) Thus, the courts have held that "[a] gift can be rescinded if it was induced by fraud or material misrepresentation (whether of the donee or a third person) *or by mistake as to a 'basic fact.*' [Citations.] . . . 'A mistake which entails the substantial frustration of the donor's purpose entitles him to restitution. No more definite general statement can be made as to what constitutes a basic mistake in the making of a gift. The donor is entitled to restitution if he was mistaken as to the . . . identity or essential characteristics of the gift.' " (*Earl v. Saks & Co.* (1951) 36 Cal.2d 602, 609, italics added; accord, *Reid v. Landon* (1958) 166 Cal.App.2d 476, 479–480, 484 (*Reid*) [affirming rescission of option agreement given "to keep harmony" where grantor executed it under mistake of fact]; *Tyler v. Larson* (1951) 106 Cal.App.2d 317, 319–320 (*Tyler*) [where grantor executed deed intending and believing it made grantee a tenant in common and not a joint tenant, grantor was entitled to reformation of deed whether or not grantee knew of or suspected the mistake]; *Ivancovich v. Sullivan* (1957) 149 Cal.App.2d 160, 163 [affirming authority of court to reform deed to correct unilateral mistake of grantor].) Edward cites no authorities holding otherwise.[10] We do not lightly construe statutes to overthrow long

[10] The one case he cites that is arguably relevant is *Fickes v. Baker* (1918) 36 Cal.App. 129, in which the court affirmed a decision refusing to reform a grant deed made by a deceased grantor based on the rule "that a voluntary conveyance will not be reformed so as to include land not referred to or conveyed therein unless all the parties interested in said land consent thereto." (*Id*. at pp. 130–131.) Here, as we have pointed out, the trial court found that Edward did consent. Further, the gift deeds here were not reformed to include land not referred to or conveyed in them (although the correction

established principles of equity or common law (*Tyler*, at p. 319), and here Edward does not show, nor have we found any indication, that Civil Code section 1148 was intended to overthrow any of this case law. Thus, we conclude it does not apply here, where the trial court found the original grant deeds were affected by a mistake of fact regarding the land that was being conveyed.[11]

For these reasons, we reject Edward's argument that Civil Code section 1148 barred reformation of the original gift deeds to exclude the residence property.

III.

Edward's Procedural and Statute of Limitations Arguments Lack Merit.

Edward contends the trial court erred in rejecting his arguments that defendants could not seek reformation because (a) they lacked standing, (b) they failed to file a cross-complaint and (c) "all conceivable statutes of limitations" barred reformation of the original gift deeds.

A. Edward's Standing Claim

Edward argues that defendants could not seek reformation of the gift deeds because neither his mother nor the estate of his father, who is deceased, were made parties to the action. The trial court rejected this argument when Edward raised it by way

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deeds *increased* the children's percentage interests in the vineyard land). Rather, the reformation was intended to carry out the parties' intent to *exclude* land that was erroneously included in them, namely the residence land (APN 04). Thus, assuming the rule recited in *Fickes* remains good law, a subject on which we express no opinion, it does not apply here.

[11] Edward argues the trial court found that "the parents alone made a 'unilateral mistake' in their gift deeds," a characterization defendants dispute. At least as to the correction gift deeds and later deeds, the court clearly found the mistake was mutual. As to the original gift deeds, for which the trial court's finding is less clear, we need not resolve the parties' disagreement because it does not matter. The cases discussed above, including *Tyler* and *Reid*, do not require a mistake to be mutual for reformation to occur; the grantor's mistake alone is sufficient. The same is true of *Estate of Duke*, *supra*, 61 Cal.4th at p. 896: "If a mistake in expression and the testator's actual and specific intent at the time the will was drafted are established by clear and convincing evidence, no policy underlying the statute of wills supports a rule that would ignore the testator's intent and unjustly enrich those who would inherit as a result of a mistake."

of a motion in limine. Edward's brief is devoid of argument on this issue and cites as authority only Code of Civil Procedure section 367 ("Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute").

Defendants argue the court's broad equitable authority gave it power to resolve all issues, that Edward himself put the deed and title anomalies before the court and those anomalies could not be resolved without either reformation or voiding of the deeds, that in any event the Trust is the owner of the property and as Trustee Harold McCutchan has standing to assert the interests of the Trust, and that Ben's and Barbara's intentions and beliefs were presented to the trial court through their agents, namely their two attorneys, whose testimony was allowed when Barbara and Harold, as personal representative for the Estate of Ben, waived the privilege. Finally, defendants argue that they had standing to seek reformation based on their own interests of record whether or not Barbara and Ben's estate were named as parties.

In his reply brief, Edward fails to respond at all to defendants' arguments. By failing to provide reasoned argument supported by legal authority in his opening brief, Edward has waived his standing argument that necessary parties are not present. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817.)

But even if Edward had preserved his standing argument, we would reject it. Harold was the trustee of the Trust, as Edward alleged in his complaint, and evidence indicates the Trust held the property (the portion that had not been gifted) at the time of trial. As the trial court observed, it had concurrent jurisdiction with the probate court over all property issues relating to administration of the Trust, and this case raised an issue regarding property ownership that affected administration of the Trust. Barbara, like Edward and his siblings, was a beneficiary of the Trust, but it is well established that "where a trustee in the performance of its duties is called upon to defend the interests of the beneficiary, it may do so without the necessity of having the beneficiaries joined as parties defendant, provided the trustee acts in good faith and its own interests are not in conflict with those of the beneficiary." (*Alexander v. Title Ins. & Trust Co*. (1941)

48 Cal.App.2d 488, 494; 13 Witkin, Summary of Cal. Law (11th ed. 2017) Trusts, § 130, p. 726; see Prob. Code, §§ 16011 [trustee has duty to defend actions that may result in loss to trust], 16249 [trustee has power to prosecute or defend actions, claims, or proceedings for the protection of trust property].) Edward does not argue there was any conflict or bad faith preventing Harold from representing Barbara's interests, and nothing in the statement of decision suggests the trial court found any. Harold had standing to do so.

B. Edward's Cross-Complaint Claim

Edward also renews his contention in the trial court that defendants could not seek the affirmative relief of reformation or rescission in their answer and could only do so in a cross-complaint. The trial court disagreed and held that defenses of mistake and the right to reformation can be asserted as affirmative defenses to a complaint, citing *Williams v. Hebbard* (1939) 33 Cal.App.2d 686, 690–691 (*Williams*)and *Groover v. Belmont* (1952) 114 Cal.App.2d 623, 626–627 (*Groover*). Witkin agrees: "Reformation is the revision of a written instrument that by fraud or mistake fails to express the intended agreement of the parties. It is an equitable action governed by the principles codified in [Civil Code section] 3399 et seq. [Citations.] *It may also be pleaded defensively by answer or cross-complaint.* (See *Siem v. Cooper* (1926) 79 [Cal.App.] 748, 752." (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 806, p. 221, italics added.)

Edward contends the *Williams* and *Groover* cases predated Code of Civil Procedure section 431.30, subdivision (c), which provides that "[a]ffirmative relief may not be claimed in the answer." Edward cites no case applying this rule in an equitable action involving relief other than money damages, nor are we aware of any.[12]

[12] Edward cites *Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189 (*Construction Protective Servs*.), which was a legal action for breach of contract and breach of the covenant of fair dealing. (*Id*. at pp. 193–194.) The court addressed the nature of a monetary offset claim raised by a defendant in response to a complaint and held that under Code of Civil Procedure section 431.70 the setoff claim could only be used defensively and not to award a monetary sum that exceeded the

As defendants point out, in another chapter, the Code of Civil Procedure specifically addresses quiet title actions such as the one Edward instituted here. (See Code Civ. Proc., §§ 760.010–765.060.) Those provisions require the defendant in a quiet title action to "set forth" in the answer "*[a]ny claim* the defendant has" (*id.*, § 761.030, subd. (a)(1), italics added)[13] and define "claim" to mean "a legal or equitable right, title, estate, lien, or interest in property or cloud upon title." (Code Civ. Proc., § 760.010, subd. (a).) These sections supplant general provisions like Code of Civil Procedure section 431.30, subdivision (c). (Code Civ. Proc., § 760.060 ["statutes . . . governing practice in civil actions generally apply to actions under this chapter *except where inconsistent with this chapter*," italics added.)

There is good reason for this more flexible approach in the quiet title context. "A quiet title action is equitable in nature except when it takes on the character of an ejectment proceeding to recover possession of real property." (*Aguayo v. Amaro*, *supra*, 213 Cal.App.4th at p. 1109.) As defendants point out, the court in a quiet title action "has complete jurisdiction over the parties to the action and the property described in the complaint and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in this chapter." (Code Civ. Proc., § 760.040, subd. (b).) This includes broad authority to grant equitable relief. (*Id.*, subd. (c); see *Estates of Collins & Flowers* (2012) 205 Cal.App.4th 1238, 1246 ["A trial court sitting in equity has broad discretion to fashion relief"].)

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plaintiff's liability. (*Construction Protective Servs.*, at pp. 197–198.) Section 431.70, which addresses cross-demands for money, does not apply here and the court, while it briefly discussed Code of Civil Procedure section 431.30 (*Construction Protective Servs.*, at pp. 197–198), did so only in the context of a legal action and cross-demands for monetary relief. As we shall discuss, because the quiet title action here is an equitable action, it is governed by other provisions of the Code of Civil Procedure and not by section 431.30.

[13] Another provision provides that a "defendant *may* by cross-complaint seek affirmative relief in the action" but does not require a defendant to do so. (Code Civ. Proc., § 761.040, subd. (a), italics added.)

In *Vanderkous v. Conley* (2010) 188 Cal.App.4th 111, our colleagues in Division Three affirmed a judgment quieting title in a seller and directing the seller to pay the purchaser the full market value of the property as compensation for her equitable interest. (*Id*. at p. 113.) The plaintiff there made an argument similar to the one Edward makes here, which was that the trial court was without power to require him to compensate the defendant for the property interest she was required to relinquish because the defendant had failed to file a cross-complaint seeking affirmative relief. This argument, the court observed, "ignores the extent of the court's equity jurisdiction in a quiet title action where 'the court has jurisdiction to hear and determine all issues necessary to do complete justice.' " (*Id*. at p. 119.) We reject Edward's contention that the court lacked authority to reform the deeds in the absence of a cross-complaint seeking that relief for the same reason. Reformation was within the trial court's broad equity jurisdiction to "hear and determine all issues necessary to do complete justice."

C. Edward's Statute of Limitations Claim

The trial court also rejected Edward's statute of limitations defense on each of the multiple occasions he raised it. The court cited *Styne v. Stevens* (2001) 26 Cal.4th 42, 51, which held that statutes of limitations do not apply to defenses, "even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief." The trial court here also found, "[b]ased on the testimony received at trial," that "the issue of mistake was timely raised by defendants" and that it was also "put at issue in this case by [Edward's] own Verified Complaint." Edward does not mention these factual findings, much less challenge them. That alone requires us to reject his statute of limitation claim.[14]

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[14] Edward does not argue that *Styne* is not good law but simply argues that *if* defendants had filed a cross-complaint seeking reformation it would be time-barred. We need not address whether a cross-complaint seeking reformation would have been time-barred had one been filed in this case. Nor need we decide whether *Styne* is a sufficient basis for allowing reformation raised by answer. The unchallenged finding of the trial court that defendants were timely in asserting mistake obviates the need for us to resolve those legal issues.

IV.

The Trial Court Judgment Did Not Violate the Subdivision Map Act.

The trial court, as we have discussed, found the parties believed that the property was separated according to the APN parcels, and intended that the gifts of an interest in the property to the children, Harold, Nancy and Edward, would be interests in the property the family members referred to as APN 06, or the vineyard property, only. To effectuate its finding that the deeds mistakenly contained legal descriptions at odds with the parties' intentions, the court, subject to a condition we discuss below, quieted title in the residence property, APN 04, such that 100 percent of that property was held by the Trust and none by Edward or his siblings. The court also quieted title in the property known as APN 06, or the vineyard property, by providing that the children each owned a 25.5 percent interest in that property and the Trust owned the remaining 23.5 percent. To be clear about this, the trial court stated the reforming deeds for the residence property would include the legal descriptions of both of the original parcels as described in the 1899 and the 1916 deeds but would specifically exclude all real property north of Alexander Valley Road. Similarly, the court stated the reforming deeds for the vineyard property would include the legal descriptions of both of the original parcels as described in the 1899 and the 1916 deeds but would specifically exclude all real property south of Alexander Valley Road.

Recognizing that neither the court nor the parties had the power to reconfigure the parcels without first complying with the Subdivision Map Act, the court made the quieting of title described above conditional on compliance with that act. It accomplished this by initially quieting title to all properties owned by the parties in Harold, as trustee, "for the sole purpose of executing the Application for Administrative Certificates of Compliance ('ACC')"[15] prepared by an expert witness for submission to the County of Sonoma. The court ordered that "[i]f the County of Sonoma grants the

[15] A certificate of compliance is issued by a local agency, which determines whether the real property complies with the Subdivision Map Act and local ordinances enacted under it. (Gov. Code, § 66450.)

ACC Application and the property thereafter is legally described in accord with the above Orders, title to the property is quieted as set forth above." In this way, the court made the quiet title portion of its order and the division of the property conditional on obtaining the approval required by the Subdivision Map Act. In the event the ACC process was "not successful so as to allow reformation of the deeds to reflect ownership interests via the APN designations as above-described," the court provided that "then all deeds from Ben and Barbara McCutchan to [Edward], [Harold], and/or Nancy McCutchan from 1991 to present, are set aside and rescinded, so that title to 100% of all property at issue is quieted in the Family Trust."

Edward contends the judgment violated the Subdivision Map Act (Gov. Code, § 66410 et seq. [Map Act]). He cites *Pescosolido v. Smith* (1983) 142 Cal.App.3d 964 (*Pescosolido*) and *Pratt v. Adams* (1964) 229 Cal.App.2d 602 (*Pratt*). Defendants point out that the trial court here did not rule that title was quieted in the APNs, as asserted by Edward, but ruled that it was temporarily quieted in Harold for the limited purpose of seeking an ACC from the County of Sonoma, leaving the matter of subdivision "completely up to the County." They distinguish the cases Edward cites on various grounds.

Pescosolido does not support Edward's argument. There, parents deeded property to their children and some months after doing so filed applications for certificates of compliance as to the portions of their land they had deeded to their children. (*Pescosolido, supra*, 142 Cal.App.3d at p. 968.) After a hearing, the responsible local government committee denied the applications and the county board of supervisors (Board) affirmed the decision. The parents petitioned the superior court for review of the Board's decision under Code of Civil Procedure section 1094.5. (*Pescosolido*, at p. 967.)

The superior court applied an independent judgment standard of review, reweighed the evidence, and reversed the Board's decision. (*Pescosolido, supra*, 142 Cal.App.3d at p. 968.) The Court of Appeal reversed, holding the superior court should have applied the substantial evidence standard and, because substantial evidence supported the Board's findings, should have affirmed the Board's decision. (*Id*. at

pp. 970–971.) The Board had found that the purpose of the gift deeds was to provide the children with investment property, to increase the value of the property by subdividing it and to divide the property so their children could sell it. (*Id*. at p. 970.) The Board also had found the parents intended "to circumvent the map filing and approval provisions required under the Subdivision Map Act and the Tulare County ordinances enacted pursuant thereto." (*Ibid*.) Notably, the appellate court did not hold that the Map Act prohibited the parents from conveying their property to their children, either in undivided interests or even in specific parcels. (*Pescosolido*, at p. 969.) Rather, "[t]he prohibition is against transfer in discrete units for subdivision development without complying with the Subdivision Map Act." (*Ibid*.) The appellate court rejected the parents' argument that gift deeds were not subject to this limitation, observing that "subdivision" is defined by the Government Code to mean " 'the division, by any subdivider, [of land] . . . for the purpose of sale, . . . whether *immediate or future*.' " (*Pescosolido*, at pp. 971–972.) Thus, *Pescosolido* indicates that parties cannot use grant deeds to create "distinct, independently developable and salable parcel[s]" if the ultimate purpose is "eventual development and sale." (*Id*. at p. 972.)

In *Pratt, supra*, 229 Cal.App.2d 602, this court held that landowners could not avoid the requirements of the Map Act by obtaining a court order partitioning the property. (*Pratt*, at p. 606.) To allow that would defeat the purposes of the Map Act and ordinances passed in conformity with it, including "regulat[ion] and control [of] the design and improvement of subdivisions, with proper consideration for their relation to adjoining areas." (*Pratt*, at p. 606.)

Neither *Pescosolido* nor *Pratt* supports Edward's argument that what the trial court did here violated the Map Act. The court did not purport to reconfigure or subdivide the existing legal parcels without the approval required by the Map Act and any county ordinances. Rather, it conditioned its ruling quieting title according to the configuration that the parties intended (and mistakenly believed the legal descriptions referred to) in compliance with state and local requirements. Nor did the court in any way usurp Sonoma County's authority to decide the issue in accordance with the Map

Act and its own procedures and standards.[16] If the county does not approve the subdivision, the court's alternative ruling was to rescind all the gift deeds with the result that the property would revert to the Trust.[17]

Edward contends the omission of an adequate legal description of the land renders the trial court's judgment in violation of the Map Act "void." He cites *Newman v. Cornelius* (1970) 3 Cal.App.3d 279. That case stands for the proposition that " 'the description in a judgment affecting real property should be certain and specific, and that an impossible, wrong, or uncertain description, or no description at all, renders the judgment erroneous and void.' " (*Id*. at p. 284.) We agree with defendants that the trial court's description of the reconfigured parcels by reference to "their correct legal property descriptions as described in the 1972 Land Conservation Contracts" attached to the judgment as well as the APNs and street addresses and to Alexander Valley Road is sufficiently certain and specific.

Finally, Edward contends the judgment creates "a mechanism to subdivide the gifted lands to [him] . . . in violation of his Constitutional Due Process Rights where more evidence is needed . . . ." To the extent this argument is comprehensible, we reject it. We take it to mean that the alternatives presented in the judgment, conditional on the outcome of the Map Act process, somehow violate Edward's right to due process. We cannot fathom how that is so. He was afforded a complete trial on the issues he and his

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[16] There was some reason to believe the County might approve the reconfiguration the court sought to accomplish. There was evidence that the County had previously "treated these properties as subdivided per the APN designations" in entering land conservation contracts with Ben and Barbara in 1972. But the court in no way assumed any particular outcome of the Map Act proceedings.

[17] Edward also argues that if his parents had gifted the property by APNs only "as contended at trial" this would have violated the Map Act. We need not reach this question because the trial court did not find that Ben and Barbara intended to gift solely by reference to APNs but rather that they included both APNs and legal descriptions with the mistaken belief that the legal descriptions in fact described the parcels to which the APNs referred. Moreover, Edward does not contend that his parents sought, by gifting undivided interests in their land to their children, to avoid or circumvent the Map Act or local ordinances.

siblings raised in this action and is not precluded from participating in the Map Act process before the County of Sonoma. The only additional evidence, if any, the court's judgment may entail is evidence Harold or anyone else may offer in the separate Map Act proceeding that Edward concedes is the proper forum for any subdivision of the existing legal parcels. Finally, the judgment is interlocutory and, as defendants point out, the parties will be back before the court on the companion partition action before a final judgment is rendered. To the extent the County decision raises any question regarding the interlocutory judgment, the parties, including Edward, will be able to address those issues with the court during the partition portion of the case. In short, Edward has failed to show that he has been deprived of due process in any way.

V.

Sanctions

Defendants have requested sanctions for a frivolous and dilatory appeal under Code of Civil Procedure section 907 and rule 8.276 of the California Rules of Court. We agree with defendants' assessment that in light of the trial court's extensive findings of fact and careful legal analyses following the trial in this case, and the complete absence of merit in any of Edward's arguments, his appeal is arguably frivolous. Further, Edward's opening brief violates California Rules of Court, rule 8.204(a)(2)(C). However, defendants have not complied with the requirements of rule 8.276(b), which requires that a party seeking appellate sanctions file a declaration supporting the amount sought no later than 10 days after appellant's reply brief is due. For that reason, we decline to award sanctions.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs of appeal.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

McCutchan v. McCutchan (A152101)